



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN

DIRECTOR

September 13, 1994  
AO-94-31

Ms. Jamie E. Tsikas  
P.O. Box 3183  
Framingham, MA 01701

Re: Legal Expenses

Dear Ms. Tsikas:

This letter is in response to your August 11, 1994 and August 24, 1994 correspondence requesting an advisory opinion regarding whether a political committee which you are working for may pay for certain legal expenses.

You state that in 1986, during the candidate's campaign for re-election, his opponent sued him for defamation. The suit was based on accusations of criminal conduct by the opponent contained in written materials allegedly distributed during the campaign by the candidate. You have stated that the candidate has no counterclaims against the plaintiff, and there are no other parties to the suit. The matter received publicity in print and radio media and was the subject of much discussion in the community. The candidate was questioned about the allegations at campaign appearances and, over the years and in subsequent campaigns, has been queried about the subject. The case has not gone to trial and is still pending.

You further state that over the last eight years \$4,000 in outstanding legal fees have accrued in answering the complaint, discovery, pretrial hearings and motions. The candidate's campaign committee desires to pay the expenses of defending against the suit.

You have asked if the committee may pay the accrued legal expenses and the legal expenses anticipated to accrue prior to disposition of the case. You have also asked if the committee may pay for any damage award which might eventually be assessed against the candidate, including interest or other amounts which might be included in an adverse judgment.

For the reasons which follow, given the facts provided in your letters, the committee may pay the reasonable legal expenses<sup>1</sup> accrued in defending against the defamation action, and may pay the additional legal fees which will be incurred prior to the disposition of the action. The committee may not, however, pay any eventual judgment for the candidate, and may not pay the interest or other amounts which might be included in an adverse judgment.

1. Payment of legal fees incurred in defending against defamation suit.

Section 6 of M.G.L. c. 55 states, in pertinent part:

[A] political committee, duly organized, may receive, pay and expend money or other things of value for the enhancement of the political future of the candidate . . . . for which the committee was organized so long as such expenditure is not primarily for the candidate's or any other person's personal use . . . .

The regulations promulgated pursuant to section 6 prohibit the payment of expenses relative to civil suits or administrative proceedings, with certain exceptions. Specifically, 970 C.M.R. 2.06(6)(a)(3)(b) exempts from the prohibition "expenses relative to certain suits where an individual's alleged liability stems solely from that person's legal performance of his duties as a candidate, treasurer or other agent of a political committee," and 970 C.M.R. 2.06(6)(a)(3)(c) exempts "expenses relative to necessary legal action to protect or further the interests of the political committee."<sup>2</sup>

This office, applying these regulations, has permitted a candidate's committee to make expenditures for legal fees in connection with a defamation suit brought by the candidate. The office stated in an advisory opinion considering this issue that "expenditures to defray the legal costs of a defamation action on behalf of a committee's candidate would only be permitted if that particular legal action is necessary to protect or further the interest of the political committee . . . . In order for a political committee to incur such legal expenses . . . the context in which the defamation arose must be related to one's campaign for public office, such as issues emanating from campaign literature or appearances . . . ." See AO-90-21.

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<sup>1</sup> We assume, for the purposes of this advisory opinion, that \$4,000 is a reasonable fee for services rendered.

<sup>2</sup> If the candidate is seeking nomination or election to a statewide office, 970 C.M.R. 2.05(4)(a)(3), rather than 970 C.M.R. 2.06(6)(a)(3), should be applied. The distinction does not affect the conclusions reached in this letter.

Similarly, a candidate's committee may make expenditures in connection with the defense of a defamation suit brought against the candidate if the expenditures are necessary to protect or further the interest of the political committee and the context of the defamation action relates to the candidate's campaign. The committee must report the debt as a liability on Schedule D of its campaign finance reports filed for each reporting period commencing with the period during which the liability was incurred. See M.G.L. c. 55, s. 18.<sup>3</sup>


2. Payment of judgment obtained against candidate.

The regulations establish a general rule that expenses relating to civil suits are prohibited, unless an exception provided for in the regulations applies. None of the exceptions listed in the regulations address the payment of an adverse judgment entered against the candidate.

Moreover, a judgment finding that the candidate defamed a plaintiff would be a personal judgment against the candidate, rather than a judgment against the committee. Payment of such a judgment by a political committee would result in the expenditure of campaign funds for a candidate's personal use, contrary to M.G.L. c. 55, s. 6. Payment by a committee on behalf of a candidate would allow a candidate to avoid his individual responsibility for payment of the judgment. Therefore, such payment would primarily be for the candidate's personal use and unlike payment of legal fees incurred in seeking to avoid a judgment, payment to satisfy a judgment would not enhance the candidate's political future.

This opinion has been rendered solely on the basis of representations made in your letters and solely in the context of M.G.L. c. 55. Please do not hesitate to contact the office if you have any additional questions.

Sincerely,

  
Michael J. Sullivan  
Director

MJS/cp

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<sup>3</sup> Section 18 requires committees to promptly disclose known liabilities. This office closely scrutinizes amendments to ensure that the disclosure requirements contained in section 18 are not circumvented. We assume, in the context of this advisory opinion, that the legal fees were first assessed several years ago and the committee promptly reported the debt as a liability. However, if the candidate and treasurer did not know that the committee could make this expenditure and therefore did not promptly report the liability, each report filed since the debt was incurred must be amended to reflect the liability.